Filed 9/21/06 P. v. Druten CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. BEVAN VAN DRUTEN, Defendant and Appellant.	A111124 (Humboldt County Super. Ct. No. CR043950S)

Defendant appeals from a judgment and sentencing following a court trial. His counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) We have reviewed the record on appeal and find no meritorious issues to be argued. We affirm.

An information filed November 8, 2004 charged defendant with three counts of assault with a deadly weapon (Pen. Code,[1] § 245, subd. (a)(1); counts one, two & three), one count of making terrorist threats (§ 422; count four), one count of false imprisonment (§§ 236, 210.5;[2] count five), one count of attempted false imprisonment (§§ 664, 236, &

[1] Unless otherwise indicated all references are to the Penal Code.

[2] Penal Code section 210.5 states, "Every person who commits the offense of false imprisonment, as defined in Section 236, against a person for purposes of protection from arrest, which substantially increases the risk of harm to the victim, or for purposes of

210.5; count six), one count of resisting or obstructing an executive officer (§ 69; count seven), and one count of possession of concentrated cannabis (Health & Saf. Code, § 11357, subd. (a); count eight). The information alleged that in the commission of counts five and seven defendant used a deadly weapon, a knife. (§ 12022, subd. (b)(1).) It was further alleged that counts one, two, three, five, and seven are serious felonies.

On February 23, 2005, defendant waived his right to a jury trial, and a court trial commenced on that date.

The following evidence was presented at trial. On August 7 and 8, 2004, defendant attended the Reggae on the River festival in Humboldt County. Sometime between 12:30 a.m. and 1:00 a.m, as Maria Mendrano Escalante, her sister, Julia, and her two nieces, Alexandra, age 12, and Edith, age 8, were leaving the festival, defendant approached them. He told them that he "wants to live, wants to be alive" and asked either Maria or Julia to help him cross the street. Defendant grabbed Julia's throat with his left hand while holding a knife in his right hand. Maria immediately responded by grabbing her sister and hitting defendant in the face, causing Julia to fall to the ground.

After Julia fell to the ground, defendant ran up to Theresa Bennett, grabbed at her earring and asked her to help him. As Theresa spun out of his reach, defendant got a hold of Theresa's friend, Carlene Foldenauer, put a knife to her neck, dragged her up against a fence, and pulled her to the ground. At least once, he threatened to kill her. Defendant also stated, "They're trying to kill me" and he "wanted three police officers in sixty seconds." As they lay on the ground, defendant started counting down from 60. He threatened to slit Carlene's throat if the police did not arrive within 60 seconds.

Deputy Dan Dopps was the first officer at the scene. He pointed his gun at defendant and asked him repeatedly to release Carlene and drop the knife. Defendant failed to comply. Instead, defendant demanded that three more officers respond, and shortly thereafter three other deputies arrived. After a total standoff of 15 minutes,

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using the person as a shield is punishable by imprisonment in the state prison for three, five, or eight years."

defendant eventually released Carlene. As defendant attempted to sit up, the officers pushed him to the ground. Defendant was transported to the Garberville substation where an inventory of his backpack revealed a water pipe used for smoking marijuana, and a "pretty substantial chunk of concentrated cannabis," gross weight, 10.5 grams.

Defendant presented evidence that he had been involuntarily intoxicated with hallucinatory drugs. Samantha McDermott, a registered nurse who had volunteered at the reggae festival over the past four years, testified that she knew of incidents when individuals unknowingly ingested drugs at the festival. Dr. Robert Soper, a psychiatrist who examined defendant, appeared as an expert witness. He testified that based on his interviews of defendant and his wife, and his review of the police reports and character witness letters, he concluded that defendant's behavior at the festival was caused by involuntary intoxication with an hallucinogenic substance. Defendant testified that he has never used methamphetamine and did not take any "mushrooms" while attending the festival. He did, however, smoke marijuana at the festival by forming cigarettes containing the substance confiscated from his backpack. An hour before the incident, after he had smoked his last marijuana cigarette, defendant "started feeling threatened."

At the conclusion of the trial, the court found defendant guilty of counts one, three, four, five, six, and seven, and not guilty of count two. As to count eight, the court granted defendant's section 1118 motion to dismiss. As to counts five and seven, the court found that defendant personally used a deadly weapon, a knife. The court did not find that the offenses charged in counts five and six were subject to punishment under section 210.5.

On March 24, 2005, defendant was referred pursuant to section 1203.03 to the California Department of Corrections Diagnostic Center for a diagnostic evaluation and recommendation. The report recommended that the court find that defendant's case was unusual and grant probation. (§ 1203, subd. (e).) At the sentencing hearing on July 21, 2005, the court followed the recommendation of the report and sentenced defendant to an aggregate term of five years and four months in state prison with execution of the sentence suspended. Defendant was placed on five years' probation.

We have reviewed the entire record with particular attention to the two items in the record that counsel has diligently pointed out might arguably support the appeal. We find no meritorious substantive or sentencing issues that would require reversal of the judgment. Defendant was represented by competent counsel throughout the proceedings. Substantial evidence supports the court's verdicts and findings. There were no errors during the proceedings and no sentencing errors subject to appeal. We, therefore, hold that there are no arguable issues that require further briefing.

The judgment is affirmed.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Swager, J.